

A U S T I N C I T Y C O U N C I L
AGENDA

Thursday, February 01, 2007

[Back](#) [Print](#)**Public Hearings and Possible Actions**
RECOMMENDATION FOR COUNCIL ACTION**ITEM No. 64**

Subject: Conduct a public hearing and consider floodplain variances requested by Mr. Mickey Bentley on behalf of Mr. William Sisco and Ms. Elizabeth Sisco to allow construction of a duplex at 5613 Joe Sayers Avenue in the 100-year and 25-year floodplains of the Hancock Branch of Shoal Creek and to waive the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain to exclude the footprint of the proposed duplex.

Fiscal Note: There is no unanticipated fiscal impact. A fiscal note is not required.

**Additional Backup
Material**

(click to open)

- [Back Up](#)
- [Site Maps](#)

For More Information: Ray Windsor, 974-3362, Gary M. Kosut, P.E., 974-3374; George E. Oswald, P.E., 974-3369

Prior Council Action: 12/14/06 - Council set Public Hearing.
01/11/07 - Item postponed until 01/25/07 01/25/07 - Item postponed to 02/01/07

STAFF RECOMMENDS DENIAL

ORDINANCE NO.

1 **AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT**
2 **5613 JOE SAYERS AVENUE FROM CERTAIN FLOODPLAIN REGULATIONS**
3 **PRESCRIBED BY THE CITY CODE FOR CONSTRUCTION OF A DUPLEX IN**
4 **THE 25 AND 100-YEAR FLOODPLAIN, AND PROVIDING AN EXPIRATION**
5 **DATE FOR THE VARIANCES.**

6
7 **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

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9 **PART 1.** This ordinance applies to the construction of a 4,723 square foot duplex
10 located at 5613 Joe Sayers Avenue within the 25 and 100-year floodplain subject to
11 Building Permit Application No. BP-05-9457R.

12 **PART 2.** Council has considered the factors for granting a variance from floodplain
13 regulations prescribed by City Code Section 25-12-3, Building Code Appendix G,
14 Section G105.7 (*Conditions for Issuance*). Council finds that the variance granted by this
15 ordinance is the minimum necessary to afford relief, is based on good and sufficient
16 cause, and failure to grant the variance would result in exceptional hardship. Council
17 further finds that the variance granted in this ordinance will not result in increased flood
18 heights, additional threats to public safety, or extraordinary public expense, or create a
19 nuisance, cause fraud or victimization of the public, or conflict with existing local
20 laws or ordinances.

21 **PART 3.** A variance is granted from:

- 22 (A) the restriction on construction in the 25 and 100-year floodplains prescribed
23 by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
- 24 (B) the easement requirements in City Code Section 25-7-152 (*Dedication of*
25 *Easements and Rights-of-Way*) to exclude the house and addition from the
26 requirement to dedicate an easement to the limits of the 100-year floodplain;
- 27 (C) the prohibition against placing an obstruction in a waterway prescribed by
28 City Code Section 25-7-2, (*Obstruction of Waterways Prohibited*).
- 29 (D) the requirement that normal access to the building be by direct connection
30 with an area at least one foot above the design flood elevation prescribed by
31 City Code Section 25-12-3, Building Code Section 1612.4 3 (*Means of*
32 *Egress*).

1 **PART 4.** If the project for which this variance is granted does not receive all necessary
2 building permits before February 12, 2008, this variance expires.

3 **PART 5.** Approval of this variance does not constitute approval of zoning, subdivision,
4 a site plan, a building permit, or any other development permit, and it does not constitute
5 a commitment to any particular land use, intensity of land use, or utility services.
6 Approval of this variance does not constitute a guarantee of flood insurance availability,
7 rates, or requirements.

8 **PART 6.** This ordinance takes effect on February 12, 2007.

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10 **PASSED AND APPROVED**

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14 _____, 2007

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Will Wynn
Mayor

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19 **APPROVED:**

20 David Allan Smith
21 City Attorney

ATTEST:

Shirley A. Gentry
City Clerk

Mr. William Sisco and Ms. Elizabeth Sisco propose to construct a new duplex at 5613 Joe Sayers Avenue. A 1300 sq. ft. duplex structure previously existed on the property, but the owners demolished it under Demolition Permit No 05016954 issued on September 21, 2005.

The proposed new duplex is the subject of Building Permit application number BP-05-9457R. The applicant proposes to construct a new, two-story duplex in the 100-year and 25-year floodplains of Hancock Branch. The applicant seeks variances to the City of Austin's floodplain management regulations in order to obtain a building permit to construct a 4,723 sq. ft. duplex residential structure (the proposed two-story structure includes 3905 sq. ft. of conditioned space, 800 sq. ft. of attached garage, and an 18 sq. ft. deck). The depth of water at the curb lines of the Joe Sayers Avenue and Theckla Terrace Street intersection during the 100-year flood event will be from 2.5 to 4.6 feet deep. The floodwater depth at the high point on the lot will be 1 8 feet deep during the 100-year flood event. The proposed new construction meets City of Austin minimum floor elevation requirements (proposed elevation is at least one-foot above the 100-year floodplain elevation).

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT
RECOMMENDS *DENIAL* OF THIS VARIANCE REQUEST.**

SUMMARY OF FINDINGS

1. THE PROPOSED CONSTRUCTION IS IN THE 100-YEAR AND 25-YEAR FLOODPLAINS OF THE HANCOCK BRANCH OF SHOAL CREEK.
2. NO SAFE ACCESS. The depth of water at the curb lines of the Joe Sayers Avenue and Theckla Terrace Street intersection during the 100-year flood event will be from 2 5 to 4.6 feet deep. The structure would be surrounded by 1 8 ft. to 3.4 feet of water. The water depths at the curb lines are outside of the limits of access by Austin Fire Department vehicles.
3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed construction will increase the opportunity for human occupancy in the floodplain.
4. HARDSHIP CONDITIONS FOR THE PROPERTY DO NOT EXIST. The property previously had a duplex structure on it, but it was demolished at the owner's discretion. Therefore, the act of denying this variance will not result in exceptional hardship on the property.
5. PREREQUISITES FOR GRANTING VARIANCES ARE NOT MET. Proposed construction does not meet Building Code prerequisites for granting a floodplain variance.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC Section 25-7-92 (Encroachment on Floodplain Prohibited) prohibits construction of a building or parking area in the 25-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance from LDC Section 25-7-92(A) to allow encroachment of the proposed structure into the 25-year floodplain.*

- II. LDC Section 25-12-3, (Local Amendment to the Building Code), Section 1612.4.3 Means of Egress provides that normal access to a building shall be by direct connection with an area that is a minimum of one foot above the design flood elevation.

***VARIANCE REQUESTED:** The applicant requests a variance to Building Code Section 1612.4.3, to allow construction of a structure without normal access by connection with an area that is a minimum of one foot above the design flood elevation. The depth of water at the curb lines of the Joe Sayers Avenue and Thekla Terrace Street intersection during the 100-year flood event will be from 2.5 to 4.6 feet deep. The structure will be surrounded by 1.8 ft. to 3.4 feet of water during the 100-year flood event. The minimum depth of water at the front wall will be 2.7 feet.*

- III. LDC Section 25-7-152 (Dedication of Easements and Rights-of-Way) requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

***VARIANCE REQUESTED:** The applicant requests a variance to exclude the footprint of the proposed structure from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- IV. LDC Section 25-7-2, Obstruction of Waterways Prohibited prohibits the placement of an obstruction in a waterway.

***VARIANCE REQUESTED:** The applicant requests a variance to place a duplex residential structure (an obstruction to the flow of floodwaters) in a waterway.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Section G 105 Variances, variances shall only be issued upon an affirmative finding of the five conditions described below.

PREREQUISITE

1.) A technical showing of good and sufficient cause based on the unique characteristics of the size, configuration or topography of the site.

Insufficient causes for issuing a variance may include the following:

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*
- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

FINDING

1.) **CONDITION IS NOT MET.** The entire lot is in the 100-year floodplain and unique site size, configuration or topography characteristics have not been demonstrated.

2.) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable;

The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.

3.) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or conflict with existing laws or ordinances.

4.) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:

- *Loss of all beneficial or productive use*
- *Deprivation of reasonable return on property*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

2.) **CONDITION IS NOT MET.** Property had a serviceable structure on it, but the owner demolished it. Owner's actions with the property, does not give rise to exceptional hardship status.

3.) **CONDITION IS NOT MET.** The proposed addition will not increase floodplain water-surface elevations. The approval of this variance request will, however, increase public safety threat and increase public expense because more occupants will be allowed in harm's way. There is a significant risk to first responders from deep flood waters in the event of an evacuation or rescue attempts.

4.) **CONDITION IS NOT MET.** In this case, the proposed project and variance request is not the minimum required to afford relief.

5.) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

5.) **CONDITION IS MET** because the proposed house floor elevation would be at or above the required regulatory flood datum (100-year floodplain elevation plus one foot).

VARIANCE CONDITIONS

In the event that the variance request is granted, the variance is effective only upon the satisfaction of the following conditions:

1. The applicant shall submit a completed *Elevation Certificate* certifying the elevation of the finished floor of the addition being a minimum of one foot above the 100-year floodplain elevation, signed by a Texas registered professional land surveyor, before the City may issue a Certificate of Occupancy for the proposed structure.
2. The applicant must provide a certification by a Texas Registered Professional Engineer or Architect certifying that the proposed addition will withstand the flood forces generated by the 100-year flood and that the design and construction is in accord with the latest edition of the American Society of Engineers Manual 24 (Flood Resistant Design and Construction).

Watershed Protection Development Review



Legend

- Lot Lines
- Stream Centerline

FLOODPLAIN

- City of Austin Future 25-Year Floodplain
- City of Austin Future 100-Year Floodplain
- Structures

Hancock
Branch

JOE SAYERS AVE

HECKLATER

Subject Property:
5613 Joe Sayers Ave



This map was produced by the City of Austin Watershed Protection and Development Review Department as a working staff map and as such no warranty is made as to its accuracy or completeness.

MCN 11/20/2008



Watershed Protection Development Review



Legend

- Lot Lines
- Stream Centerline

FLOODPLAIN

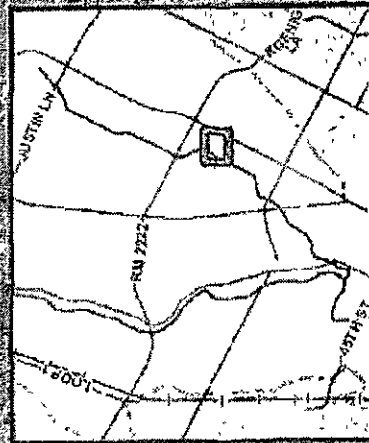
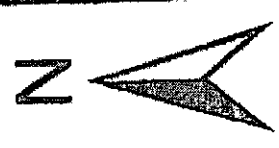
City of Austin Future 25-Year Floodplain

City of Austin Future 100-Year Floodplain

Structures

Hancock
Branch

Subject Property:
5613 Joe Sayers Ave



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MON 11/29/2006